

**Office of Inspector General
Evaluation Report**

AIR

**EPA and State Progress
In Issuing Title V Permits**

Report No. 2002-P-00008

March 29, 2002

**Inspector General Office Conducting the Evaluation: Office of Program
Evaluation Northern Division**

Regions Covered: Regions 1, 3, 4, 5, 7, 8

Program Office Involved: Office of Air and Radiation

Abbreviations

Act	Clean Air Act
AFS	Aerometric Information Retrieval System Facility Subsystem
CFR	Code of Federal Regulations
EPA	Environmental Protection Agency
MOA	Memorandum of Agreement
OAR	Office of Air and Radiation
OAQPS	Office of Air Quality Planning and Standards
OECA	Office of Enforcement and Compliance Assurance
OIG	Office of Inspector General

State and Local State and Local Air Pollution Control Agencies Agencies

Executive Summary

To reduce violations of air pollution laws and improve the enforcement of those laws, Title V of the 1990 Clean Air Act (Act) requires that all major stationary sources of air pollutants obtain a permit to operate. Translating and consolidating the applicable air pollution requirements for major stationary sources into site-specific, legally enforceable permit limits is a complex, time-consuming, and resource intensive process. Nonetheless, in passing Title V, Congress provided the statutory authority, fee collection authority, and expectation that all Title V permits would be issued by November 1997, seven years after it passed the Act. However, over a decade later, only 70 percent of the sources have been issued Title V permits.

Purpose

The Office of Inspector General (OIG) initiated this evaluation at the request of U.S. Environmental Protection Agency (EPA) Region 5 management because they were concerned about the progress state and local air pollution control agencies (state and local agencies) were making in issuing Title V permits under the Act. In planning the evaluation, we expanded the scope to include other EPA regions and states because problems in issuing Title V permits were not isolated to Region 5. The objectives of our evaluation were to identify:

Factors delaying the issuance of Title V permits by selected state and local agencies, and

Practices contributing to more timely issuance of permits by selected state and local agencies.

Results in Brief

Lack of State Resources, Complex EPA Regulations, and Conflicting Priorities Contributed to Permit Delays

Nationwide, as of December 31, 2001, state and local agencies had issued 70 percent (13,036 of 18,709) of the required Title V permits. Of 112 state and local agencies approved to administer the Title V program, only 4 state and 17 local agencies had issued all of their Title V permits. In the six states we reviewed, key factors delaying the issuance of Title V permits included insufficient state resources, complex EPA regulations, and conflicting state priorities.

Insufficient resources. Of the six state agencies reviewed, three had problems with resources or staffing. For example, the Massachusetts Department of

Environmental Protection collected \$1.3 million in Title V fees in 2000, but program costs were \$1.9 million for the year.

Complex regulations and limited guidance. In each of the six state agencies reviewed, one or more permit writers reported having difficulty understanding and resolving questions on EPA's complex air toxics regulations and reported having difficulty using EPA's limited guidance to establish adequate site-specific monitoring requirements.

Conflicting priorities. In addition to Title V operating permits, each of the state agencies also issue construction permits to new sources and to sources that are making significant changes to their operations permits that they must act on within specified time limits. Two agencies took deliberate action to ensure that staff were not forced to work on construction permits rather than Title V operating permits.

As a result, many sources do not have the operating permits that were designed to reduce source violations, improve regulatory agency enforcement abilities, establish site-specific monitoring requirements, increase source accountability, and ensure adequate public involvement in the permitting process.

EPA Oversight And Technical Assistance Had Limited Impact

EPA did not provide adequate oversight and technical assistance to state and local Title V programs, and did not use the sanctions provided in the Act to foster more timely issuance of Title V permits.

Fee reviews of many state and local agencies not performed. From January 1998 to December 2001, EPA had only evaluated 28 of 112 state and local agencies regarding how they were assessing and managing Title V fees. These reviews are needed to identify potential resource issues at state and local agencies.

Revisions to Title V regulations not completed. While EPA issued regulations in 1992, due to concerns about selected provisions, EPA has been working to revise them since 1994. State officials indicated that dealing with repeated draft and proposed revisions to Title V regulations introduced an element of uncertainty that also contributed to delays in issuing Title V permits.

Insufficient data collected. State and local agencies were not required to consistently provide the information EPA identified as being needed to adequately oversee the Title V program. EPA collected information from all state and local agencies on the number of permits issued, but did not maintain an adequate database on specific delays in issuing individual permits.

Act's provisions to take action not used. Although most state and local programs did not issue their permits within three years of EPA approval, EPA has not

used the Act's provisions for issuing notices of deficiency, sanctions, and program withdrawal when state and local agencies have missed the Act's deadline for issuing initial Title V permits.

As a result, EPA oversight had little impact on the delays experienced by state and local agencies. The perspective of senior EPA officials is that they face a dilemma in trying to take more stringent actions, such as sanctions against state and local agencies, while adhering to agency policies to work with state and local agencies as partners in environmental protection to the maximum extent possible. Also, they believe that the Title V program has limited incentives for both states and industries to proactively address the existing permit backlog.

Management Support, Partnerships, and Site Visits Contributed to More Timely Issuance of Title V Permits

In the six states we reviewed, three practices that contributed to the progress that agencies made in issuing Title V operating permits were:

- State agency management support for the Title V program.
- State agency and industry partnering.
- Permit writer site visits to facilities.

Each of these practices contributed to the writing and issuance of Title V operating permits on a more timely basis. Employing one or more of these practices, along with sufficient resources, contributed to Florida and Pennsylvania completing most of their permits before other states. However, EPA has not taken a leadership role in collecting and disseminating information on practices that show promise of helping agencies issue permits on a more timely basis.

Recommendations

We recommend that the Assistant Administrator for Air and Radiation:

- Require EPA regions to conduct fee protocol reviews.

- Revive agency efforts to make air toxics standards easier to incorporate into Title V permits.

- Complete the revisions to the Title V regulations.

- Identify and collect information from regions, states, and local agencies to adequately oversee the Title V program.

- Develop and execute a national plan for addressing implementation deficiencies in Title V programs, including specifying the actions EPA will take to address missed milestone dates for issuing the initial permits.

Develop a plan for identifying, collecting, and disseminating promising practices on the implementation of Title V programs.

Detailed recommendations are contained at the end of chapters 3 and 4.

Agency Actions

In his March 26, 2002 response to the draft report, the Assistant Administrator stated that while state and local agencies have made good progress in issuing initial Title V permits, there is still more work to do. He stated that many of the sources remaining to be permitted are the more complex facilities and that the problems identified in the report continue to be of concern. The Assistant Administrator agreed with the conclusion that more can be done to help this effort and will follow up, within 90 days of issuance of the final report, with an action plan based on the report's findings and recommendations.

The Assistant Administrator also provided comments to several recommendations, which are summarized at the end of chapter 3, and some suggested clarifications that were incorporated into the final report.

A major stationary source is any non-mobile source of air pollution that meets one or more criteria as defined in the 1990 Clean Air Act. The criteria for major stationary source determinations is listed in appendix 1.